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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,284	03/05/2002	Duncan Roger Harper	10660-070US (10279P1)	5606

7590

09/11/2003

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EXAMINER

LOVERING, RICHARD D

ART UNIT

PAPER NUMBER

1712

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/091,284	HARPER ET AL.	
	Examiner	Art Unit	
	Lovering	1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit 1712

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-16 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bassam et al. 5,849,264. The claims of Bassam et al. refer to an insecticidal composition in the form of a water-in-oil emulsion comprising (a) 2-80% w/w propellant, (b) 0.5-8% w/w of one or more emulsifiers selected from di- and tri-sorbitan esters, polyglycerol esters, etc., (c) 1-20% w/w of a solvent selected from carboxylic acid (e.g. fatty acids - column 3, lines 65-67), (b) 0.001-5% w/w of a pyrethroid insecticide and (e) water to bring the total composition to 100% w/w. Component (d) comprises carboxylic acids and diethyl orthophthalate as well. The solvents of Bassam et al. are selected from fatty acid and dialkyl phthalates. Hence, as long as applicants cannot clearly and unambiguously demonstrate that such fatty acids and phthalates will not fulfill the conductivity criteria of claim 1, the compositions are deemed to be anticipated by Bassam et al.

Art Unit 1712

3. Claims 17-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fox et al. WO 99/21659. The claims of Fox et al. describe an aerosol spray device and method of reducing the droplet size of a composition sprayed from such device. The preferred aerosol composition comprises an oil phase, an aqueous phase, a surfactant and a compressed propellant (page 8, lines 4-12). A charge is imparted to the liquid droplets solely by the interaction between the liquid within the aerosol spray device and the spray device itself as the liquid is sprayed therefrom (page 2, line 22 - page 3, line 22).

4. Claims 1-13, 15 and 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stopper 4,536,323, esp. column 4, line 34 - column 5, line 19, noting also column 3, line 55 - column 4, line 19. Sodium lauryl sulfate in the typical composition in column 4 would fulfill the conductivity criteria of claim 1 herein.

5. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 9 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Art Unit 1712

Claim 9 recites a Markush group which is not considered proper for the reasons that it is indefinite as to scope and incomplete as to its membership in not reciting --and-- after "atoms;" in line 26.

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

8. The remaining references listed on the attached Form PTO-892 are cumulative to the references applied herein, and/or further show the state of the art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc  
September 8, 2003

*Richard D. Lovering*  
RICHARD D. LOVERING  
PRIMARY EXAMINER  
GROUP 1200